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Attorneys for Defendants
C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability MDL NO. 15-02641-PHX-DGC
Litigation

This Document Relates to:

SCOTT ROBERT HENNAGER,

Plaintiff,

Case No. 2:17-cv-03878-DGC

v.

C. R. BARD, INC., a New Jersey
Corporation; AND BARD PERIPHERAL
VASCULAR INC., (a subsidiary and/or
Division of Defendant C. R. BARD, INC.)
an Arizona Corporation,

**DEFENDANTS' MOTION TO
DISMISS PLAINTIFF SCOTT
ROBERT HENNAGER'S
COMPLAINT**

Defendants.

1 **I. ARGUMENT**

2 Defendants Bard Peripheral Vascular, Inc. and Bard Peripheral Vascular, Inc.
3 (collectively “Bard” or the “defendants”) respectfully request that the Court dismiss the
4 claims of deceased plaintiff Scott Robert Hennager (the “plaintiff”) with prejudice, pursuant
5 to Fed. R. Civ. P. 25(a)(1), for failure to file a motion to substitute him for a proper plaintiff
6 in this case.

7 Plaintiff Scott Robert Hennager filed a lawsuit against Defendants C. R. Bard, Inc. and
8 Bard Peripheral Vascular, Inc. (collectively, “Bard”) for personal injuries he allegedly
9 sustained from a Bard inferior vena cava filter (the “Filter”). (Case 2:17-cv-03878-DGC, ECF
10 No. 1.) The plaintiff is deceased and, accordingly, the plaintiff’s counsel filed a Notice of
11 Suggestion of Death with the Court on October 17, 2018. (Case 2:15-md-02641-DGC, ECF
12 No. 12982.)

13 The Federal Rules of Civil Procedure require the Court to dismiss an action by a
14 deceased plaintiff if no motion is made to substitute that deceased plaintiff for a proper party
15 within ninety (90) days of a Notice of Suggestion of Death. Fed. R. Civ. P. 25(a)(1). In the
16 thirteen months since the plaintiff filed the Notice of Suggestion of Death, however, the
17 plaintiff has failed to file a motion to substitute a proper party into this action, despite ample
18 opportunity to do so.

19 Because more than ninety (90) days have passed since the plaintiff’s Notice of
20 Suggestion of Death, the defendants respectfully request that the Court dismiss this action in
21 accordance with Fed. R. Civ. P. 25(a)(1). A proposed Order is attached.

22 **II. CONCLUSION**

23 For the reasons stated above defendants C. R. Bard, Inc. and Bard Peripheral Vascular,
24 Inc., respectfully request that the Court dismiss Plaintiff Scott Robert Hennager’s Complaint
25 with prejudice pursuant to Federal Rule of Civil Procedure 25(a)(1).
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1 This 21st day of November, 2019.

2
3 s/Richard B. North, Jr.
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15 **Attorney for Defendants C. R. Bard, Inc. and**
16 **Bard Peripheral Vascular, Inc.**
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 21, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send notification of such filing to all counsel of record.

s/Richard B. North, Jr.
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